IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 855 of 2005

Shri Gauri Shankar ..Petitioner

vs.

1. The Commandant
Armed Forces Medical College
Pune and ors ..Respondents

Shri P.B.Shah for petitioner
Shri M.I.Setha, Sr.Counsel with Shri S.S.Pakale
and Shri N.P.Sharma for respondents.

CORAM: A.P.SHAH and
Dr.D.Y.CHANDRACHUD JJ.
5th August, 2005.

P.C.

. Rule. Learned Counsel appearing for the respondents waives service.

2. By consent, rule is made returnable forthwith.

3. The petitioner is challenging the communication dated 11th January, 2005 addressed to the petitioner proposing invocation of the bond executed by him and asking him to remit the bond amount of Rs.4,50,000/- by way of Demand Draft.

4. The petitioner has taken admission for M.B.B.S.course in Armed Forces Medical College in

July 2000 and completed his M.B.B.S.course in December, 2004. The petitioner was given admission after execution of the requisite bond in the sum of Rs.15,00,000/- by the petitioner and his father, containing the terms and conditions of admission and also undertaking that the petitioner would serve Armed Forces for a specified period (hereinafter referred to as the service liability). It appears that in June, 2002, the petitioner came to be admitted in Command Hospital, Pune for treatment of mild hyper tension (High B.P.) and was subsequently discharged. Respondent no.1 issued a letter dated 28th October, 2002 to the petitioner informing him that he had been removed from service liability for commission in the Armed Forced on medical grounds. However, the petitioner was allowed to continue the studies on condition that he would be liable to pay the bond amount of Rs.15,00,000/- The petitioner has cleared his final M.B.B.S. examination in December, 2004. By letter dated 11th January, 2005 the petitioner was asked to pay a sum of 4,50,000/- by Bank Draft. The petitioner made a representation that his father is working as a Mechanic Gr.A with the South Eastern Coalfields Ltd. with a meagre salary and, therefore, he applied for waiver of the bond amount. The respondents, however, sought to

execute the bond of the petitioner and, therefore, he is compelled to file the present petition. The petitioner contends that the respondents ought to have waived the amount of bond as he was medically unfit for the reasons or circumstances over which he had no control. Despite that the respondents sought to invoke the bond and recover a sum of Rs.4,50,000/-

5. In response to the notice issued to the respondents reply has been filed through Prof.and Head, Department of Bio-Chemistry, Armed Forces Medical College. It is contended, inter alia, that clause 5 of the bond states that in the event of a medical cadet being removed he shall be liable to pay the amount calculated at the rate of Rs.3,00,000/- per year or part thereof from the period from the date of admission to the college till the date of becoming a non service liability subject to maximum of Rs.15,00,000/- It is contended that the condition regarding payment of bond money was known to the petitioner and his father was also made aware of the bond including removal of medical cadets who are rendered non service liability on medical grounds. It is contended that the bond executed by the petitioner

was a contract between two parties which is still intact and the petitioner is legally and materially bound by the said contract to pay back to the Government the money spent on the training of the petitioner.

6. The petitioner in support of his case has relied upon several orders passed by this Court whereby the bond amount has been reduced to Rs.1,00,000/-

7. There is no dispute that the petitioner has undergone his medical education at Armed Medical College at Pune. There is also not much dispute that at the time of seeking admission a bond in the sum of Rs.15,00,000/- was executed by the petitioner and his father with an undertaking that the petitioner would serve the army for a specified period after completing his M.B.B.S.examination. It is not the case that the petitioner after passing out the M.B.B.S.examination was not willing to serve the army and the fact that the petitioner was found to be not medically fit for serving the armed forces and he has been relieved of his service liability is not disputed. The medical certificates placed on record show that the petitioner has been diagonised as suffering from

mild hypertension. This Court in several cases where the concerned candidates were found incapable to serve the armed forces after having passed the M.B.B.S.examination directed the respondents to return the bank guarantee or relieve the candidate of the bond on payment of Rs.1,00,000/- instead of the bond amount. In our considered opinion, the case of the petitioner is not materially and substantially different from such cases and interest of justice would be served if the petitioner is directed to pay a sum of Rs.1,00,000/- in lieu of the bond money.

8. Learned Counsel appearing for the respondents, contended that when earlier orders were passed the bond amount was Rs.3,00,000/- and in respect of the present case the bond amount being Rs.15,00,000/- the amount should be proportionately increased to Rs.4,50,000/- We are not impressed by the arguments of the learned Counsel for the respondent. The amount of Rs.1,00,000/- was directed to be paid by the earlier Division Bench in the interest of justice. Moreover in the present case the petitioner is the son of a mechanic and it would be very harsh to saddle him with huge liability of Rs.4,50,000/- We are, therefore, of the view that we should follow the same order and direct the

petitioner to pay a sum of Rs.1,00,000/- and discharge him from the liability under the said bond.

9. Accordingly, we direct the petitioner to pay a sum of Rs.1,00,000/- and on such payment being made the petitioner shall stand discharged from the terms and conditions of the said bond cum bank guarantee and shall not be liable to pay any amount whatsoever and on payment of such amount by the petitioner the respondent shall issue necessary "No Objection Certificate" to the petitioner to complete his internship in any other civil hospital. Rule is accordingly made absolute with no order as to costs.